IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FIFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 428 of 2004

Between:

A.P.Power Engineering & Technical Contract Workers union, Regd.No.H-9, H.No.8-2-684/1/4/A, Durga Enclave,
Road No.12, Banjara Hills, Hyderabad-34, rep by its Secretary (Legal), Mr.G.Mukunda Reddy

..... PETITIONER

AND

1 A.P.Transmission Corporation Limited, Vidyut Soudha, Somajiguda, Hyderabad
2 The Chief Engineer, TL & SS, 220KV Sub-Station, Shankarapuram, Kadapa
3 The Superintending Engineer, TL & SS, 220KV Sub-Station, Shankarapuram, Kadapa
4 Provident Fund Commissioner, Barkatpura, Hyderabad
5 Asst.Provident Fund Commissioner, Sub Regional Office, 1/30 Railway Station Road, Kadapa 516004
6 Commissioner of Labour, Anjaiah Bhavan, Charminar X Roads, Hyderabad., A.P.
7 The Asst. Commissioner of Labour, N.G.O. Colony, Kadapa

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction one in the nature of writ of Mandamus directing (a) respondents No.1 to 3 to apply the provisions of employees provident fund Act, to create funds for payment of gratuity and retrenchment compensation in accordance with the relevant enactments, (b) Respondent Nos.4 and 5 to enforce the Employees Provident Fund and miscellaneous provisions Act 1952 in terms of Sec.7-A of the said Act, (c) the respondent No.6 to take appropriate legal action against the respondent Nos.1 to 3 for violation of the provisions of CLRA Act in terms of Sec.26 of the said Act (d) The respondent No.7 to take appropriate action under Section 15

of Payment of wages Act.

Counsel for the Petitioner:PARTY-IN-PERSON

Counsel for the Respondents: SC for A.P.TRANSCO for R1 to R3.

GP FOR LABOUR for R6 & R7

Mr.R.N.Reddy, S.C. for EPF for R 4 & 5

The Court made the following :

O R D E R:

The petitioner-A.P.Power Engineering & Technical Contract Workers Union filed this writ petition stating that respondents 1 to 3 have engaged contract labour against the sanctioned posts in violation of Section 7 & 12 of the Contract Labour (Regulation & Abolition) Act 1972 and in spite of filing a complaint, which was taken on file as complaint No.1 of 2001 before the 5th respondent-Commissioner of Labour, no action was taken by him. It is also the case of the petitioner that the contribution of the employee shall be recovered from the wages of every employee including contract labour on completion of 240 days and the equivalent amount shall be contributed by the principal employer and credited to the account number allotted by respondent Nos. 4 and 5. Respondent Nos. 1 to 5 did not choose to implement the provisions of the Employees Provident Fund Act in respect of the petitioner Union. In view of the fact that the contractors did not enter into an agreement with the 3rd respondent Unit, the members of the petitioner union along with other contract labours were not paid their wages from 01.09.2003. The 7th respondent-Assistant Commissioner of Labour, Kadapa who is the competent authority under the Payment of Wages Act, instead of taking action under Section 15 of the Payment of Wages Act, convened a meeting on 05.12.2003 and advised the management to arrange for payment but however, the wages have not been paid. It is also the case of the petitioner Union that on 24.12.2003 the Joint Managing Director of the 1st respondent Corporation suggested the contractors to terminate the services of the existing contract labour and to appoint their own personnel as contemplated under

clause 30 (C) of the tender specification. If payments are further delayed, the petitioners will be subjected to untold hardship.

Respondents 1 to 3 filed counter affidavit stating that as the writ petition is filed without impleading the Contractor, it is not maintainable. It is also stated that the work of manning of sub-stations were awarded to different contractors calling tenders irrespective of the sanctioned posts and the termination of the contract workers is purely a matter between contract labour and the contractor and it has nothing to do with respondents 1 to 3. As per Clause 20 of the Tender Specifications the Tenderer should follow all statutory Rules, Acts and Regulations that are relevant and necessary for carrying out the O & M works of Sub-stations. As per clause 25 of the tender specifications for any failure of implementing the statutory Rules and Regulations by the tenderer, the A.P.TRANSCO will be at liberty to recover such amounts from the bills or security deposits of the tenderer. The contractors have accepted the above conditions and quoted their rates for execution of O & M works. As such, they have to obtain EPFR code number in their names for the works awarded to them for their own establishment and follow all the statutory obligations as per rules in force. Before entering into an agreement, the contractors have to obtain EPF code labour licence, insurance, etc., and fulfill all conditions for entering into the agreement.

Respondent No.5 filed counter stating that the 1st respondent establishment is a covered establishment under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and various units of the petitioner were allotted separate code numbers and they are complying with the provisions. Wherever there is no compliance, Section 7-A enquiries are being conducted. Earlier, the 1st respondent approached this Court by filing a writ petition and this Court disposed of the writ petition directing the authority to hear the contractors before assessing the dues. In case of 1st respondent also, the enquiry under Section 7-A was initiated

through summons, dated 30.10.2003 and the employer is taking time to produce the records and it is still pending. The writ petition is premature and it has to be dismissed.

The learned counsel for the petitioner Union submits that the Contractors having contributed the PF amount for the period from 1985-86 to March 1997 in respect of the contract labour, the PF Commissioner in similar cases passed orders against the Board for recovery of the P.F. contributions amounting to Rs.3,95,614/- in respect of the Contract Labour; In his order, the Assistant P.F.Commissioner, P.F.Organisation, Kadapa was made liable to tender the said EPF amounts under the Act in respect of the employees engaged under the principal employer through the Contractor. In this regard, the A.P. Electricity Board vide Memo No.DIR/DM(IR)/PO-1/1972/97, dated 24-09-1997 issued necessary instructions to all the chief Engineers and Superintending Engineers to comply with the provisions of Employees Provident Fund Act. Though rival claimsw have been made on either side, having regard to the fact that the petitioner union filed a complaint in C.No.1 of 2001 before the 5th respondent to take appropriate action against R1 to R3 for violation of Sections 11, 12 and 25 of A.P.Contract Labour Rules and Conditions of Service (for short CLRA) notified under Rule 25 as per Section 26 of the CLRA Act, is still pending, I am not inclined to express any opinion on the merits of the matter.

It would suffice in the interest of justice if the 5th respondent is directed to consider and dispose of the complaint filed by the petitioner Union in accordance with law and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order, if not already disposed of.

There shall be an order accordingly and the writ petition stands disposed of. No costs.

25.08.2004

C.C.In one week

B/o

tjs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The A.P.Transmission Corporation Limited, Vidyut Soudha, Somajiguda, Hyderabad
2 The Chief Engineer, TL & SS, 220KV Sub-Station, Shankarapuram, Kadapa
3 The Superintending Engineer, TL & SS, 220KV Sub-Station, Shankarapuram, Kadapa
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6 The Commissioner of Labour, Anjaiah Bhavan, Charminar X Roads, Hyderabad., A.P.
7 The Asst. Commissioner of Labour, N.G.O. Colony, Kadapa

8. The Government Pleader for Labour, High Court Buildings, Hyderabad (OUT)

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